

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7974

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JACOB A. BOLDEN,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Martin K. Reidinger,
District Judge. (1:99-cr-00074-MR-1)

Submitted: April 19, 2016

Decided: April 21, 2016

Before AGEE, DIAZ, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jacob A. Bolden, Appellant Pro Se. Amy Elizabeth Ray, Assistant
United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jacob A. Bolden seeks to appeal the district court's order treating his Fed. R. Civ. P. 60(b) motion as a successive 28 U.S.C. § 2255 (2012) motion, and dismissing it on that basis. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court.

Additionally, we construe Bolden's notice of appeal and informal brief as an application to file a second or successive § 2255 motion. United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003). In order to obtain authorization to file a successive § 2255 motion, a prisoner must assert claims based on either:

(1) newly discovered evidence that . . . would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). Bolden seeks relief under Johnson v. United States, 135 S. Ct. 2551 (2015). We conclude that Johnson would entitle Bolden to no relief because Bolden's prior conviction for breaking and entering under North Carolina law constitutes burglary and thus was unaffected by Johnson. 135 S. Ct. at 2563; see United States v. Mungro, 754 F.3d 267, 272 (4th

Cir.); cert. denied, 135 S. Ct. 734 (2014); United States v. Thompson, 588 F.3d 197, 202 (4th Cir. 2009). Therefore, we deny authorization to file a successive § 2255 motion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED